

BEFORE THE  
SOUTH CAROLINA DEPARTMENT OF INSURANCE

|                                    |   |                         |
|------------------------------------|---|-------------------------|
| In the Matter of:                  | ) | Order No. 2016-01       |
|                                    | ) |                         |
| Self-Funded Rates for the Workers’ | ) | Corrective Action Order |
| Compensation Assigned Risk Plan    | ) |                         |
|                                    | ) |                         |
| _____                              | ) |                         |

This matter comes before me pursuant to the provisions of S.C. Code Ann. § 38-73-540(C) (2015). Section 38-73-540(C) provides:

It is essential for maintaining the viability of the assigned risk plan to establish and maintain rates at a level which permits the plan to operate as a self-funded mechanism. The plan administrator shall maintain necessary rate making data in order to permit the actuarial determination of rates and rating plans appropriate for the business insured through the plan. All assigned carriers shall report their experience on business written under the plan to the plan administrator in a format prescribed by the plan administrator. The plan administrator shall monitor rate adequacy and plan results and shall notify the director of the Department of Insurance in the event that excessive losses are indicated so as to enable the director to take corrective action.

This order implements corrective action so that assigned risk rates can be self-sustaining, and so that the assigned risk plan can continue to be a market of last resort for employers who are unable to secure workers’ compensation insurance in the voluntary market.

Requests for insurance loss cost and assigned risk revisions previously were governed by S. C. Code Ann. § 38-73-910, which required notice of a rate increase and a public hearing, if requested. In 1998, S.C. Code Ann. § 38-73-540(C) was amended to ensure assigned risk rates are self-sustaining. This section also provides a mechanism for corrective action in the event current rates are not adequate. The corrective action procedure under § 38-73-540(C) was recognized as a permissible alternative to the hearing procedure in *NCCI v. South Carolina Department of Insurance and Philip S. Porter*, ALJ Docket No. 00-ALJ-09-0687 (2001). In this decision, Judge Kittrell ruled:

I find and conclude that the current predicament of assigned risk servicing carriers alluded to by several witnesses is not without redress. NCCI may file for new assigned risk rates and provide newer data which might substantiate the request for a rate increase. ***I also note that S.C. Code Ann. §38-73-540(C) provides an alternate and flexible remedy.*** Under that section, assigned risk carriers shall report their experience to the plan administrator who shall notify the Department to

enable the director of the Department to take corrective action, if necessary.  
***Nothing in this ruling precludes the servicing carriers from having their rate needs addressed in this way.***

*Id.* (emphasis added).

Judge Kittrell's ruling recognized the statutory authority of this Department to take corrective action pursuant to § 38-73-540(C) upon notice from the Plan Administrator that excessive losses exist within the assigned risk plan. Further, the Department's 2005 Corrective Action Order implemented the process for synchronizing rates and rule changes in the voluntary and assigned risk workers' compensation insurance markets. Revised voluntary loss costs have been approved with an effective date of September 1, 2016.

Under S.C. Code Ann. § 38-73-540(C), the Plan Administrator is required to monitor rate adequacy and plan results and is required to notify the Director of the Department of Insurance in the event excessive losses are indicated so as to enable the Director to take corrective action. Accordingly, the National Council on Compensation Insurance Inc. (NCCI), as the Plan Administrator for the State of South Carolina, sent a letter to the Department on February 26, 2016 advising that excessive losses are indicated for the assigned risk plan and are jeopardizing the ability of the plan to operate as a self-funded mechanism. That notice is attached to this Order as Exhibit A.

When losses in a particular class (or classes) are excessive, there is a need to correct the class relativities to reflect higher expected losses. The fact that the resulting *overall* impact may be a decrease would not invalidate the NCCI's assertion that assigned risk losses are excessive, requiring corrective action to revise the assigned risk rate level.

The Department's property and casualty actuary, Will Davis, FCAS, MAAA, reviewed the letter and other supporting data received from the Plan Administrator. His recommendations are contained in a confidential report to me. The revised rates and rating values for South Carolina's assigned risk market were provided to and reviewed by the South Carolina Consumer Advocate, who has no objection to them.

I hereby adopt and approve the recommendations contained in that report and conclude that corrective action is necessary to ensure that the assigned risk plan is self-funded and self-sustaining in accordance with the requirements of § 38-73-540(C).

**IT IS THEREFORE ORDERED THAT** in calculating the revised rates and rating values for the industrial class codes in South Carolina's assigned risk market, a loss cost multiplier of 2.184 shall be applied to the September 1, 2016 South Carolina voluntary market loss costs.

**IT IS FURTHER ORDERED THAT** revised assigned risk rates for the federal and coal mine class codes shall be calculated via application of a loss cost multiplier calculated based on the same expense and differential provisions underlying the industrial class codes' 2.184 loss cost multiplier and reflecting the most recent federal assessment and benefit levels.

IT IS FURTHER ORDERED THAT the expense constant used to calculate assigned risk premiums be reduced from \$230 to \$160.

  
Raymond G. Farmer  
Director

Columbia, South Carolina

June 30, 2016

***CORRECTIVE ACTION ORDER NO. 2016-01***

***Exhibit A: NCCI Letter Dated February 26, 2016***

***(SEE THE FOLLOWING PAGE)***

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**National Council on  
Compensation Insurance**

**Amy Quinn**  
State Relations Executive  
Regulatory Services Division  
803-356-0851  
amy\_quinn@ncci.com

February 26, 2016

Ray Farmer, Director  
South Carolina Department of Insurance  
1201 Main Street, Suite 1000  
Columbia, SC 29201

**RE: South Carolina Assigned Risk Rates**

Dear Director Farmer:

I am providing, pursuant to Title 38, Chapter 73, Section 540 (C) of the South Carolina Code of Laws, 1976, as amended, a formal notice that excessive losses are indicated in the South Carolina Assigned Risk Plan and as such are jeopardizing the ability of the plan to operate as a self-funded mechanism. This notice is provided by the National Council on Compensation Insurance Inc., ("NCCI") in its role as plan administrator of the South Carolina Assigned Risk Plan.

In an effort to enable you to take appropriate corrective action, NCCI has, upon your request, provided to you information regarding the South Carolina Assigned Risk Plan.

In order to move toward achieving the self-sustaining requirement of § 38-73-540(C) and to ensure the stability of the assigned risk workers compensation market, it is necessary to reflect a revision to the current assigned risk rate level.

Accordingly, NCCI requests that the South Carolina Department of Insurance take corrective action in accordance with and pursuant to Title 38, Chapter 73, Section 540 (C) of the South Carolina Code of Laws.

In the event you require additional information please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "A Quinn". The signature is written in a cursive, flowing style.

Amy Quinn  
State Relations Executive

Attachment

Cc: Will Davis